(29,669)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1923.

No. 359.

IN THE MATTER OF PETITION OF EAST RIVER TOWING CO., INC., FOR LIMITATION OF LIABILITY OF THE STEAMTUG EDWARD, HER ENGINES, ETC.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 20, 1923.

[fol. 1] **UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT**

In the Matter of the Petition of the East River Towing Company, Inc., for limitation of Its Liability as Owner of the Steamtug Edward, Her Engines, etc.

Before Rogers, Hough, and Mayer, Circuit Judges

STATEMENT OF FACTS

This cause came here by appeal from a final order in Admiralty entered in the District Court for the Eastern District of New York.

The following facts appear from the *apostles*: East River Towing Company, Inc., is a corporation of the State of New York and owner of steamtug Edward. On August 2, 1922, the Edward sank in navigable waters of the United States, viz: New York harbor. The cause of her sinking was an explosion of the tug's boiler. Said sinking and/or explosion caused loss of life and injury to property and persons. Especially did it cause the death of one Thomas McCaffrey, a master mariner, and at the time of said sinking employed as captain of said tug Edward.

Said explosion and sinking occurred within the territorial limits of the State of New York; and one Elizabeth McCaffrey as administratrix, etc. of said Thomas McCaffrey, deceased, instituted an action at law in the Supreme Court of said State against said East River [fol. 2] Towing Company, Inc., seeking to recover (pursuant to the statutes of said State) damages for the death of said decedent; alleging the same to have been caused by the negligence of said defendant.

Thereupon the East River Towing Company, Inc., as owner of said Edward, filed its petition in the District Court of the United States for the Eastern District of New York, pursuant to U. S. Rev. Stat., Secs. 4283 et seq. and the rules in Admiralty prescribed by the Supreme Court of the United States in respect of proceedings for limitation of ship owner's liability.

Said petition alleges that the claims (including McCaffrey's) already made against it in respect of said sinking and/or explosion, exceed the value of its interest in said steamtug and her freight pending; it avers petitioner's desire to contest and deny its liability and that of said steamtug for any and all loss, destruction or injury caused by said explosion and/or sinking; and it prays the Court (inter alia) to issue its monition requiring all persons claiming as aforesaid to appear and make their several claims before a Commissioner to be named by the Court, and also to issue its injunction (pursuant to Admiralty Rule 51) restraining the prosecution of said action of said Elizabeth McCaffrey, administratrix, or of the claims set forth therein except in the limitation proceeding begun by said petition. After proceedings regular under the statutes and rules above referred to the District Court did issue injunction restraining

[fol. 3] the further prosecution of the said action of said Elizabeth McCaffrey, administratrix, etc.

Thereupon said Elizabeth McCaffrey, administratrix, appeared specially in the limitation proceeding aforesaid and moved to "vacate, set aside and declare null and void" the aforesaid injunction.

After hearing, said District Court ordered as follows:

"It appearing that Congress, by the enactment of the Act of June 5th, 1922, commonly known as the Jones Act, intended to change the law with respect to limitation of liability to the extent of allowing a trial by a jury to said plaintiff by making the provisions regulating such limitation inapplicable to a case falling within the provisions of said Act of June 5th, 1922, that the said motion be and hereby is in all things granted, and that the said order entered herein on December 5th 1,922, restraining the further prosecution of the action, pending in the Supreme Court of New York, County of Kings, where Elizabeth McCaffrey as administratrix of the goods, chattels and credits of Thomas McCaffrey deceased is plaintiff and the East River Towing Co., Inc., is defendant, be and the same hereby is vacated and set aside."

From this order petitioner took the present appeal.

QUESTIONS CERTIFIED

(1) If an action at law be brought such as is described in Merchant Marine Act 1920 Sec. 33, can the prosecution thereof be enjoined by the injunction provided for in Admiralty Rule 51?

(2) Has the Merchant Marine Act 1920, Sec. 33, impliedly repealed the statute regarding limitation of liability of ship owners [fol. 4] so far as claims or suits based on personal injuries to or death of seamen are concerned?

Dated May 28, 1923.

Henry Wade Rogers, Charles M. Hough, Julius M. Mayer, Judges of the United States Circuit Court of Appeals for the Second Circuit.

[fol. 5] UNITED STATES OF AMERICA,
Southern District of New York, ss:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

CLERK'S CERTIFICATE

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Petition of East River Towing Company, Inc., for limitation of liability, was duly filed

and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, at the City of New York on the 29th day of June, 1923.

Wm. Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit. [Seal of United States Circuit Court of Appeals for the Second Circuit.]

[fol. 6] [File endorsement omitted.]

Endorsed on cover: File No. 29,669. U. S. Circuit Court Appeals, 2d Circuit. Term No. 359. In the matter of petition of East River Towing Co., Inc., for limitation of the liability of the Steamtug Edward, her engines, &c. (Certificate.) Filed June 7th, 1923. File No. 29,669.

(29,669)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 81

IN THE MATTER OF PETITION OF EAST RIVER TOWING CO., INC., FOR LIMITATION OF LIABILITY OF STEAM-TUG "EDWARD," HER ENGINES, ETC.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 15, 1924

[fol. 1] AT A STATED TERM OF THE

CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Held at the Federal Building, in the City of New York, on the 7th Day of Oct., 1924

Present:

Honorable Henry Wade Rogers,
" Charles M. Hough,
" Martin T. Manton,
Circuit Judges.

In the Matter of the Petition of the EAST RIVER TOWING CO., INC., for Limitation of Its Liability as Owner of the Steamship Edward, Her Engines, etc.

ORDER AMENDING CERTIFICATE

Upon the annexed stipulation and upon motion of William S. Butler, attorney for Elizabeth McCaffrey as administratrix of the goods, chattels and credits of Thomas McCaffrey, deceased, it is

Ordered that the certificate of the Circuit Court of Appeals, 2nd Circuit to the Supreme Court of the United States herein bearing date May 28, 1923, be and the same hereby is amended by striking from said certificate in the third paragraph thereof the words and brackets (pursuant to the statutes of said State), and inserting in lieu thereof the words and brackets (pursuant, so plaintiff claims, to Section 33 of the Merchant Marine Act June 5, 1920, the following being a copy of the complaint in said action;

"SUPREME COURT, KINGS COUNTY

ELIZABETH MCCAFFREY, as Admx. of the Goods, Chattels, and Credits of Thomas McCaffrey, Deceased, Plaintiff,

against

EAST RIVER TOWING COMPANY, Defendant

[fol. 2] Plaintiff alleges:

1. Plaintiff alleges that at all the times hereinafter mentioned the defendant was and now is a domestic corporation.

2. That at all the times hereinafter mentioned the defendant was and now is in the towing business in the City of New York and elsewhere.

3. That at all the times hereinafter mentioned the defendant was the owner of the tub boat 'Edwards.'

4. That at all the times hereinafter mentioned the defendant maintained, operated and controlled the tug boat 'Edwards.'

5. That at all the times hereinafter mentioned the said tug boat 'Edwards' was in the possession and custody of the defendant.

6. That at all the times hereinafter mentioned the said tug boat 'Edwards' was engaged for and on behalf of the defendant in plying the navigable waters of the East River, New York Bay, New York.

7. That at all the times hereinafter mentioned the said tug boat 'Edwards' was flying the American flag and was registered at the port of New York by the defendant.

8. That on the 2nd day of August, 1922 the plaintiff's intestate was in the employ of the defendant.

9. That pursuant to his said employment by the defendant, plaintiff's intestate was engaged as master of the said tug boat 'Edwards' on the 2nd day of August, 1920.

10. That on the said 2nd day of August, 1920, plaintiff's intestate was pursuant to his employment for and on behalf of the defendant engaged as master of the said tug boat 'Edwards' at the place aforesaid.

11. That on the 2nd day of August, 1922 while the plaintiff's intestate was pursuant to his said employment engaged in the work aforesaid, for and on behalf of the defendant, the boilers and engines upon the said tug boat 'Edwards' were by reason of the negligence and carelessness of the defendant, in failing to provide the plaintiff with competent fellow workmen; a proper and safe place to work, and proper and safe ways, works, machinery and appliances, for the performance of the work in hand, and in failing to safeguard, inspect and keep safe the place, appliance and apparatus used in said work, and in failing to warn, guard and protect the plaintiff's intestate against the danger thereof; caused and permitted to explode, whereby the plaintiff's intestate was fatally injured.

[fol. 3] 12. That the injuries sustained by the plaintiff's intestate at the time and place aforesaid caused his death on the said 2nd day of August, 1920.

13. Plaintiff's intestate left him surviving his wife, Elizabeth McCaffrey, and seven children, to wit: Catherine Walsh, Joseph McCaffrey, Mary McCaffrey Brogan, Thomas McCaffrey, James McCaffrey, Francis McCaffrey and Alice McCaffrey, who have been damaged by his death in the sum of One hundred thousand ($100,000) dollars.

14. That pursuant to an order of the Surrogate's Court, bearing date September 1st, 1922, the plaintiff was duly appointed administratrix of the goods, chattels and credits of said Thomas McCaffrey deceased, and that the plaintiff duly qualified as such administratrix on said date; and letters of administration were thereupon duly

issued to the plaintiff, and she was authorized and empowered to prosecute this action as such administratrix.

Wherefore plaintiff demands judgment against the defendant for the said sum of One hundred thousand ($100,000) dollars' damages, together with the costs of this action.

William S. Butler, Attorney for Plaintiff, Office & P. O. Address 190 Montague St., Brooklyn, N. Y."

Enter.

HENRY WADE ROGERS.
C. M. HOUGH.
MARTIN T. MANTON.

A true copy. Wm. Parkin, clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 4] [File endorsement omitted.]

[fol. 5] [File endorsement omitted.]